

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

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U.S. DISTRICT COURT

In re:)	
)	
UNITED STATES OF)	
AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No.
)	2:20-CR-00182
CHRISTOPHER ISIDRO)	
ROJAS,)	
)	
Defendant.)	
)	
-----)	

BEFORE THE HONORABLE JARED C. BENNETT

August 4, 2020

Transcript of Electronically Recorded Hearing

Appearances of Counsel:

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1 **Salt Lake City, Utah, August 4, 2020**

2 * * * * *

3 THE COURT: This is a reminder. This is
4 federal court still, and so if -- the rules against
5 recording are still in effect and so we ask all of
6 you please not to record this proceeding. The
7 official record will be kept here in federal court
8 which I will be keeping here as we go.

9 Let's go on the record in the case of the
10 *United States of America versus Christopher Isidro*
11 *Rojas*. This is case 2:20-CR-182. This is on a
12 Superseding Indictment on one count under 18 USC
13 844(i), Arson in Interstate Commerce.

14 Before we get started, could I please have
15 counsel state their appearances for the record and
16 let's begin with the United States.

17 MR. YEATES: Your Honor, Drew Yeates on
18 behalf of the United States. I'm also here with AUSA
19 Reeves and Thorpe.

20 THE COURT: Thank you.

21 MR. BERARDI: Frank Berardi, Your Honor, for
22 Mr. Rojas.

23 THE COURT: Thank you very much. I will
24 note there are also numerous other people who are
25 observing this proceeding, and we do not need to

1 identify them at this time.

2 Let's first proceed with this current COVID
3 situation we have. Mr. Rojas you, of course, have
4 the right to an in-person appearance for purposes of
5 this initial appearance and arraignment today.

6 Unfortunately, because of the pandemic, the
7 Court is closed at least until September. We'll see
8 if that date holds. Do you waive your right to an
9 in-person appearance and choose instead to proceed by
10 way of video teleconference today?

11 THE DEFENDANT: I am okay with proceeding
12 with the video conference.

13 THE COURT: Thank you. I will accept that
14 as a knowing and voluntary --

15 THE DEFENDANT: And the safety of everybody.
16 I understand what's going on right now and would like
17 to obviously take the safest route for sure.

18 THE COURT: Thank you. And I very much
19 appreciate your accommodation and we'll find that it
20 is a knowing and voluntary waiver of your right to
21 in-person appearance and we will proceed today by way
22 of video teleconference.

23 Before we get going, I want to inform you
24 Mr. Rojas of two very important rights that you have
25 under the United States Constitution. The first is

1 under the Fifth Amendment you have a right to remain
2 silent. And I would encourage you not to say
3 anything without first discussing with your lawyer.
4 Because if you do say things, they may be used
5 against you in a subsequent proceeding.

6 Now your second important right is that of
7 having an attorney present to assist you at all
8 stages of this proceeding. That is your right under
9 the Sixth Amendment.

10 My understanding is that you have retained
11 Mr. Berardi to represent you. Is that correct?

12 THE DEFENDANT: That is correct.

13 THE COURT: Thank you.

14 Mr. Berardi, just by way of note, um, I
15 understand that, I just want to make sure that you
16 understand, that in the event that Mr. Rojas would be
17 unable to pay you in the future, there is at least a
18 possibility that you may be asked to take this case
19 pro bono. Do you understand that?

20 MR. BERARDI: I understand that, Your Honor.

21 THE COURT: Thank you. So we're here on the
22 Indictment which is alleging one count. Have you had
23 a chance, Mr. Berardi, to review this one count
24 Indictment with your client?

25 MR. BERARDI: Not with my client, Your

1 Honor, no. I reviewed it just today and last -- well
2 and yesterday when I received it.

3 THE COURT: Would you like a few minutes to
4 meet with Mr. Rojas to go over that Indictment before
5 we get started?

6 MR. BERARDI: Yes, that would be nice, Your
7 Honor.

8 THE COURT: About how much time would you
9 need?

10 MR. BERARDI: I would say ten minutes.

11 THE COURT: Ten minutes. What I'm going to
12 do, Mr. Rojas, is I am going to put you and
13 Mr. Berardi in a breakout room here on Zoom. No one
14 else can get into it, it will just be the two of you,
15 I don't get into it. I'm going to set the clock for
16 ten minutes so everyone who is observing these
17 proceeding will know what time we'll reconvene. I'll
18 give you a one minute warning when they close the
19 breakout room and then you will be merged back into
20 our conversation here. Does that sound acceptable?

21 MR. BERARDI: Yes, Your Honor. Thank you.

22 THE DEFENDANT: Yes, Your Honor. Thank you.

23 THE COURT: Okay. Let me do that.

24 MR. BERARDI: Can you hear me, Chris?

25 THE COURT: We're not there yet. Hold on

1 just a second.

2 THE DEFENDANT: I can still see everybody.

3 THE COURT: All right. Here we go. I'm
4 going to send you, you'll have to press a button.

5 THE DEFENDANT: Thank you, Your Honor.

6 THE COURT: You bet.

7 (Brief pause in proceedings.)

8 MR. BERARDI: Your Honor?

9 THE COURT: Let me see here. It looks like
10 you're back a little bit early.

11 MR. BERARDI: Yes, Your Honor.

12 THE COURT: Okay. Perfect we will proceed
13 accordingly. So we'll go back on the record. And
14 now that you have had a chance to speak with
15 Mr. Rojas, just do a video here, there we go, that's
16 better. Now that you have had a chance to speak with
17 Mr. Rojas, let's go over the Indictment. Do you
18 desire, first of all, Mr. Berardi, do you desire a
19 formal reading of the Indictment?

20 MR. BERARDI: No, Your Honor. We have gone
21 over it. We'll waive the reading.

22 THE COURT: Mr. Yeates, what is the maximum
23 penalty for Count 1 of the Indictment?

24 MR. YEATES: Your Honor, the maximum
25 possible penalty is 20 years in prison and a fine of

1 \$250,000. If convicted, there is a minimum mandatory
2 period of incarceration of five years.

3 THE COURT: Thank you.

4 Mr. Rojas, as to Count 1 in the Superseding
5 Indictment, how do you plead, guilty or not guilty?

6 THE DEFENDANT: I would plead not guilty.

7 THE COURT: Thank you. I will accept your
8 not guilty plea.

9 Mr. Yeates, what is the outside date in this
10 case?

11 MR. YEATES: Your Honor, the outside date is
12 October 13th. However, another co-defendant has
13 appeared previously and a trial has been scheduled
14 before the assigned district court judge for the 2nd
15 day of October. And we would ask the Court to
16 schedule the same deadlines.

17 MR. BERARDI: Did you say October 2nd?

18 THE COURT: Mr. Berardi, do you have any
19 objection to the same deadlines applying in the, as
20 to the other co-defendants, applying to your client?

21 MR. BERARDI: Your Honor, I don't think so.
22 I didn't hear the last date. Did we say the trial in
23 the other case was set for October 2nd?

24 THE COURT: Mr. Yeates?

25 MR. YEATES: That's right.

1 MR. BERARDI: Okay. That's fine, Your
2 Honor.

3 THE COURT: So the motion cut offs, the plea
4 cut offs, all of the other deadlines that are already
5 set in this case will then therefore apply to
6 Mr. Rojas as well. And, of course, to the extent
7 there needs to be a motion, a Speedy Trial Act to
8 extend the time for who knows what reasons, we're in
9 2020 so who knows what is going to happen, of course
10 the Court will take those under advisement.

11 And Mr. Yeates, what is the United States'
12 position on detention?

13 MR. YEATES: Your Honor, we are seeking
14 detention in this case.

15 THE COURT: Mr. Berardi, is the Defendant
16 contesting detention in this matter?

17 MR. BERARDI: He is, Your Honor. Um, I just
18 -- I read the Presentence Report or Pretrial Report.
19 You know, there is four, I think, four contentions
20 that they're concerned for his nonappearance.

21 THE COURT: Well Mr. Berardi, I don't mean
22 to cut you off, but before we go there what I plan on
23 doing is having the United States go first because
24 they bear the burden, well at least there is a
25 presumption here, but have them go first and then I

1 will have you articulate why your client overcomes
2 the presumption of detention here, and then we'll go
3 from there.

4 So Mr. Yeates, are you going to be making
5 the argument on behalf of the United States?

6 MR. YEATES: I am, Your Honor.

7 THE COURT: Please proceed.

8 MR. YEATES: Your Honor, to begin, I filed a
9 memorandum related to detention and that is
10 Document 59. I hope that Your Honor has had an
11 opportunity to view that. I also hope that
12 Mr. Berardi has had an opportunity to see it.

13 But in summary, Your Honor, the United
14 States seeks detention pursuant to section 3142(f).
15 And the basis for that is really twofold. One, he is
16 charged with a crime of violence. Um, also, Your
17 Honor, he is charged with an offense listed under
18 section 2332b(g)5(B). And as a third potential
19 reason for detention, Your Honor, we believe that he
20 presents a serious risk of flight.

21 With that said, Your Honor, it is the
22 position of the United States that in this case a
23 presumption of detention applies. I would mention,
24 Your Honor, that co-defendants who have already
25 appeared before another magistrate judge as well as

1 the District Court Judge, the judges have all found
2 that indeed there is a presumption of detention. But
3 for the benefit of the record, I will indicate that
4 the presumption of detention applies because the
5 offense is one listed under 18 United States Code
6 Section 2332b subsection (g)5(B).

7 And with that presumption, Your Honor, I
8 would indicate to the Court that as Your Honor well
9 knows, the courts have looked at this presumption of
10 detention, they have found it is not a bursting
11 bubble, meaning that even if the defense is to
12 proffer evidence that might rebut that presumption,
13 the fact that congress has found that a certain type
14 of individual presents a nonmanageable risk of flight
15 and a nonmanageable danger to the community should
16 continue to be considered by the Court.

17 Now, Your Honor, if the Court would like me
18 to go into my full argument, I'm prepared to do that
19 as well.

20 THE COURT: Yes, please. I mean I
21 understand this is a presumption case given the
22 charge bend pending in Count 1 of the Indictment, so
23 please go ahead and let me know what the argument is
24 on behalf of the United States on behalf of
25 detention.

1 MR. YEATES: Your Honor, looking at the
2 Pretrial Services Report there are a few things that
3 stick out. One is that the Defendant didn't appear
4 to be completely candid in his discussions with
5 Pretrial Services. In fact, there appear to be a
6 number of facts where he and his mother disagree. I
7 think that the Court should be concerned about that.

8 The other thing that is clear in the report
9 is that Mr. Rojas has an issue, a problem with
10 substance abuse, namely with alcohol, and I will
11 discuss that a little more in a moment. But it also
12 appears that he has frequently used THC or marijuana
13 products although he indicates that he has used those
14 products when he is in states where it's legal.

15 Your Honor, I would like to pull up a
16 document to help guide the remainder of my argument,
17 but I will be showing, with the Court's permission, a
18 number of photographs and a short video related to
19 the Defendant and the allegations. But I have
20 covered now, Your Honor, the presumption of
21 detention. I also want to discuss briefly four
22 different sections related to the detention statute
23 here under 3142.

24 First, Your Honor, I would like to discuss
25 the nature and circumstances of the offense. And as

1 the Court may well know from looking through the
2 documents in this case, this case is a result of a
3 riot that took place in Salt Lake City.

4 Now the United States will concede that
5 prior to the riot there was a demonstration. And it
6 was for a time a lawful demonstration.
7 Unfortunately, a number of individuals decided to
8 begin causing damage to public facilities, to private
9 businesses, and in this case to a Salt Lake City
10 patrol car.

11 Indeed, the patrol car was overturned and
12 the Defendant in this case, Mr. Rojas, helped in the
13 destruction of that vehicle. He started by ripping
14 pieces off the patrol car. And then, Your Honor, he
15 participated in burning that car and it was
16 completely destroyed.

17 When I look under Section 3142(g), I believe
18 that the Court should easily find that the factors
19 weigh heavily in favor of detention as to the nature
20 and circumstances of the offense.

21 Turning to sub paragraph (g)(2), the weight
22 of the evidence, it is at this time, Your Honor, that
23 I would ask for the ability to have my co-counsel Mr.
24 Reeves show eight separate exhibits. May he, Your
25 Honor, take control and then show these exhibits?

1 THE COURT: Yes. I believe he should have
2 the ability to share his screen.

3 MR. REEVES: Thank you, Your Honor. One
4 moment.

5 MR. YEATES: Mr. Reeves, if we can just
6 start with Exhibit 1.

7 MR. REEVES: Your Honor, can you hear me?

8 THE COURT: Yes.

9 MR. REEVES: Let's try that again. Here we
10 go.

11 MR. YEATES: Your Honor, Exhibit 1 is a
12 screen capture of a video at the riot which depicts
13 Mr. Rojas ripping a bumper off of the police car.

14 As you can see from the photograph, it shows
15 the play feature and that's because this was taken
16 from a video. But you'll see on the left-hand side
17 an individual wearing a red and black long-sleeve
18 shirts, khaki pants, and what appear to be Van shoes.
19 That is Mr. Rojas. And you can see there as he is
20 pulling back ripping the bumper off of the Salt Lake
21 City patrol car.

22 Mr. Reeves, if you can please show
23 Government's Exhibit 2.

24 MR. REEVES: Can that be seen by all?

25 THE COURT: Yes.

1 MR. YEATES: It can. Your Honor, this is a
2 similar photograph. It shows Mr. Rojas again ripping
3 a part of the patrol car off after the car had been
4 overturned.

5 Mr. Reeves, Exhibit 3, please. Now, Your
6 Honor, to give the Court an understanding of this
7 photograph, to the left of where these two
8 individuals are standing, is the overturned patrol
9 car. And the individual wearing what appears to be a
10 white medical mask is Mr. Rojas. To the right, is an
11 unidentified co-conspirator. And what they are
12 holding is a white fabric of some sort. It might be
13 a tablecloth or a bed sheet, but it is a white cloth
14 fabric. And you will see in Mr. Rojas's hand what
15 appears to be a Bic lighter. And you will see that
16 with his left hand he is manipulating the fabric, and
17 with the right hand he is lighting it aflame.

18 Mr. Reeves, could we have Exhibit 4, please.

19 MR. REEVES: Can that be seen by all?

20 THE COURT: Yes.

21 MR. YEATES: Your Honor, what you will see
22 here is the unidentified co-conspirator wearing a gas
23 mask, he is still holding the fabric which is now
24 beginning to burn. And you will see Mr. Rojas's hand
25 as he points at the flame. The two of them are

1 facing the patrol car. And although it's difficult
2 to make out the conversation they're having, the
3 intent of the two was to throw this toward the patrol
4 car into the interior of the patrol car that already
5 had windows broken out in order to light the patrol
6 car aflame.

7 Mr. Reeves, Exhibit 4 -- or excuse me,
8 Exhibit 5, please.

9 In this photograph, Your Honor, you will see
10 Mr. Rojas on the left-hand side of his
11 co-conspirator, the co-conspirator with his right
12 hand tosses the burning fabric and it is headed
13 towards the patrol car.

14 I'll proffer, Your Honor, that it indeed
15 falls within the interior of the patrol car and
16 begins to burn. Another co-defendant then pours on
17 an accelerant and it lights the entire patrol car
18 aflame.

19 Mr. Reeves, could we have Exhibit 6, please.
20 Your Honor, at the protest turned riot, there were
21 many, many, videos, and photographs. And this is one
22 of Mr. Rojas who appears to be showing off, posing
23 for a photograph. And in his left hand you see the
24 lighter that he used to light the fabric on fire.

25 And then if we could move to Government

1 Exhibit 7, please, Mr. Reeves. This is a video, Your
2 Honor, and I believe there is audio.

3 (Whereupon, Exhibit 7 was played
4 for the record.)

5 MR. REEVES: Can the audio be heard by all.

6 MR. YEATES: Your Honor, the individual
7 depicted in the video indicates that he put the car
8 on fire.

9 And then, Your Honor, if I could have
10 Government Exhibit 8. After the car is fully aflame,
11 you will see in the background Mr. Rojas wearing the
12 same clothing. He has on a long-sleeve red and black
13 shirt, a gray undershirt, his khaki pants. He is
14 still wearing his white medical style mask and he
15 appears to be celebrating. In the video, Your Honor,
16 he walks from one side of the street to another, that
17 is Fourth South across the street from the library
18 and he is celebrating the burning of the patrol car.

19 Mr. Reeves, thank you for showing those
20 exhibits.

21 Your Honor, based on that, the weight of the
22 evidence and the nature and circumstances of the
23 offense, the Government would ask the Court to find
24 that those both weigh heavily in favor of detention.
25 But there is one -- at least one other area we have

1 to discuss and that is the Defendant's history and
2 characteristics pursuant to 3142(g)(3)(A) and there
3 is some material in the Pretrial Services Report that
4 I will cover, but there is also some material that
5 was left out of the report that the Court should be
6 aware of.

7 So first, Your Honor, I mentioned the lack
8 of candor with pretrial. The fact that he made
9 statements that differed with those of his mother.
10 The second is that clearly the defendant has a
11 history of abusing alcohol. Third, Your Honor, it
12 appears that he has been under employed for a number
13 of months and that under employment will continue.

14 He is currently charged with a DUI offense
15 and is facing that offense in state or perhaps
16 municipal court. Also, Your Honor, the report
17 indicates that Mr. Rojas has failed to appear six
18 times which is a pattern of failures to appear. In
19 addition, he has failed to comply with court orders
20 and has a pattern of doing so.

21 There are four cases that aren't mentioned
22 in the Pretrial Services Report that are relevant to
23 the Court's determination here. In court case
24 155004879, in Logan Justice Court, the Defendant was
25 charged with a minor offense, stop light violation.

1 However, he failed to appear on the citation. He was
2 charged with that failure to appear and he was
3 convicted of the same. That took place, Your Honor,
4 in 2016.

5 Next, in Logan, in case 165004135, the
6 Defendant was charged with two minor violations. A
7 speeding and a driving on a denied license. However,
8 he exacerbated the situation by failing to appear on
9 the citation and again in that case he was found
10 guilty of the same. That also took place, Your
11 Honor, in 2016.

12 The third case I would bring to the Court's
13 attention is a traffic offense involving failure to
14 register or expired tags, speeding, and driving on a
15 denied license. Again, showing a habit, Your Honor,
16 of violating the mandate of the Driver's License
17 Division, he was driving on a suspended or denied
18 driver's license.

19 And then the last case in Utah that I will
20 bring to the Court's attention is a 2019-case where
21 he was charged with driving without proof of
22 insurance, as well as driving on a suspended or
23 revoked license. He was later convicted of the
24 driving on suspended or revoked license. Again, Your
25 Honor, thumbing his nose at the Driver's License

1 Division.

2 Your Honor, when I look at his history of
3 failures to appear and failures to comply, and his
4 repeated insistence on driving on suspended or denied
5 driver's license, what I see is a clear pattern that
6 the Defendant is not going to follow court orders nor
7 is he going to abide by the restrictions placed upon
8 his driver's license.

9 Finally, Your Honor, before I end, I will
10 indicate that the Court should find the nature and
11 seriousness and danger of the community that the
12 Defendant created when he lit a patrol car on fire in
13 a major city thoroughfare.

14 Your Honor, he placed every one there in
15 danger. Himself, protestors, rioters, police
16 officers, media, and casual observers. All of them
17 could have been harmed by the patrol car which,
18 loaded with ammunition, had bullets exploding due to
19 the fire.

20 Based on this, Your Honor, the United States
21 would ask the Court to find both that Mr. Rojas
22 presents an unmanageable danger to the community and
23 also an unmanageable risk of nonappearance and we
24 would ask that he be detained pending trial.

25 THE COURT: Thank you, Mr. Yeates.

1 Mr. Berardi?

2 MR. BERARDI: Your Honor, well, to begin
3 with I think this is actually one of the most easily
4 manageable cases. Looking at these -- looking at
5 these pictures in this video that Mr. Yeates has
6 shown us, his contentions, if I recall them, is one
7 he says that there is discrepancies between Mr. Rojas
8 and what his mother stated. There may very well be.
9 But the person who knows the facts the best is
10 Mr. Rojas. I haven't heard anything that says
11 anything he stated wasn't true. Everything that he
12 did state that he told the interviewer was correct.

13 I notice that the report -- in the report,
14 if I can just pull it up here a second, um, states
15 that the four reasons of contention is one of them is
16 that he has ties to a foreign country. I don't know
17 where that information comes from. I mean there is
18 nothing in the report that says that. I mean he is
19 born in California and he lives here now. He has
20 lived here now for the last 12 years. His whole
21 family lives here. His mother lives here, his father
22 lives here, his brothers live here. I don't see -- I
23 don't know how they drew this conclusion for a
24 foreign country. I'm assuming they're saying it is
25 Mexico, but I don't see any -- any link whatsoever.

1 I don't see anything that shows that he is a flight
2 risk. He has got no place to go. All his ties are
3 here.

4 His failure to appear history, as Mr. Yeates
5 pointed out, they all go back to 2016 in a situation
6 where he had moved, he didn't even know about the
7 tickets until after the fact. When he found out
8 about them, he took care of them all, he paid all of
9 the fines off and he paid everything off. The
10 driving on suspension comes from the fact that after
11 he had paid everything, he still owed a reinstatement
12 fee which nobody told him about. And so while he
13 presumed his license was valid then, he still needed
14 to pay \$65.00 to get his license reinstated. That's
15 -- that's where that charge comes from.

16 Looking at his history which is minimal, I
17 don't see anything that says he is a risk to the
18 community or he certainly is not a flight risk. I
19 mean it seems like he has a GPS monitor on him, um,
20 boom, he is easily controlled and monitored.

21 I don't -- I don't see what the issue would
22 be there. Let me -- oh, and one of the pictures, I
23 hadn't had a chance to see those before where the car
24 is on fire, is that the police car or is that a
25 different car? I couldn't tell. I thought it was a

1 different vehicle.

2 THE COURT: There are two different
3 vehicles. One is the police car and another is
4 another car that was burned apparently near he was
5 standing by.

6 MR. BERARDI: Okay. So all right. That's
7 what I noticed. Like I said, those are my arguments
8 and I don't see anything that was untruthful in
9 anything he stated to the interviewer. I couldn't be
10 there because he couldn't three-way the call through
11 the jail or something. So...

12 THE COURT: Very well. So I'm prepared to
13 make my ruling. Under 18 USC 3142, I have to make
14 two determinations and I have to base those
15 determinations on a series of factors.

16 One of the things that I don't decide is
17 guilt or innocence. That has nothing to do with me
18 at this point in time. What I have to decide is
19 whether Mr. Rojas is an unmanageable risk of failure
20 to not -- to appear; and second, whether he is a
21 danger to the community. Danger to the community
22 doesn't necessarily mean violent acts toward someone
23 or somebody, but rather it simply means the ability
24 -- that he is likely to commit other crimes in
25 addition to the potential violent acts.

1 The factors that I have to consider is I
2 have to consider number one there is a presumption of
3 detention in this case because the charge that he is
4 now facing carries with it, by congress's mandate, a
5 presumption of detention. We accept that he is
6 presumed detained and basically he needs to rebut
7 that presumption, but the Government, the United
8 States, bears the burden of proof throughout the
9 proceeding.

10 Number two, I have to consider the nature
11 and circumstances of the offense charged. This is a
12 very serious offense. Lighting a car on fire in
13 plain daylight is a very serious offense. And so
14 that's -- that is certainly something that weights in
15 favor of detention.

16 The nature -- the weight of the evidence.
17 That is at least the Ninth Circuit has indicated the
18 least important factor that I have to consider, but I
19 would suggest the weight of the evidence here is
20 certainly strong, the fact that there is photographic
21 and video evidence of this taking place.

22 At the same time we have to consider the
23 history and characteristics of the person to
24 determine whether he is indeed unmanageable.
25 Although the Court does have some concern with these

1 failures to not appear, they appear to have an
2 explanation. Moreover, I do not see kind of the
3 history of repeated criminal behavior and drug use
4 and other things that we see in other cases that
5 typically warrant some type of detention to say that
6 an individual is unmanageable either because he or
7 she is danger to the community or because he or she
8 is a risk of flight.

9 The failures to not appear while certainly
10 concerning to me and I hope it would be perfectly
11 clear this is not traffic court in Logan. This is
12 federal court.

13 MR. BERARDI: Correct.

14 THE COURT: If there is a failure to appear,
15 there are consequences for that.

16 THE DEFENDANT: I understand.

17 THE COURT: Sorry, I'm not quite there
18 Mr. Rojas, but I'm doing my ruling. We'll hear from
19 you at the right time if your attorney thinks it is a
20 good idea.

21 Because of the person's character,
22 relationships to others in the community, that's one
23 thing I have to consider in addition to whether he is
24 already under supervision which appears that he
25 isn't. And does he pose any particular danger to any

1 one person or to a segment of the community. And I
2 just don't see any evidence that he does.

3 So what I'm going to do, is I am not going
4 to order the Defendant detained. However, I'm going
5 to put him on a number of conditions, the violation
6 of which will indeed bring a revisiting of this under
7 Section 3148. And if he is unable to abide by those
8 conditions, then detention is certainly going to be a
9 valid option.

10 So these are the conditions that I'm going
11 to impose. Number one, the Defendant needs to
12 maintain or actively seek verifiable employment. The
13 work as you go as the audio engineer stuff comes up
14 that is not going to cut it. You need to be out
15 looking for a job or getting an education in some
16 sort of an educational program that is approved by a
17 pretrial officer.

18 Number two, I would expect you to abide by
19 conditions in terms of the following. Number one,
20 maintain a residence. You do not change that
21 residence without permission from the pretrial
22 officer. Number two, you do not travel outside of
23 the State of Utah without permission from the
24 pretrial officer. And there will be no travel
25 outside of the United States period. If you have a

1 passport, I would ask you to turn that in to the
2 pretrial services officer immediately. If you don't
3 have a passport, then I would order you not to apply
4 for one. I'm ordering you to avoid all contact with
5 others that are named in this case, who are
6 considered to be alleged victims or potential
7 witnesses, and co-defendants. In fact, one of the
8 things that the law requires me to warn you of on
9 conditions of release, is if there is any association
10 in terms of trying to obstruct justice, obstruct the
11 criminal investigation, intimidate witnesses, that is
12 one of the offenses that would be an additional
13 offense to the one with which you are charged. The
14 law requires me to advise you of that fact. You are
15 not to use alcohol period, nor frequent any
16 establishment where alcohol is the main item of
17 order.

18 You are not to possess any narcotic drug
19 regardless of whether it is legal in some other
20 state. If it is under the federal controlled
21 substances laws, it is -- it is on those schedules,
22 it is forbidden under federal law you are not to
23 possess it and not to use it.

24 You are to submit to drug and alcohol
25 testing as directed by the pretrial services officer.

1 And I am going to order you to pay at least a part of
2 that or all of it depending on your current financial
3 circumstances.

4 You will also submit your person, residence,
5 and your vehicle to searches that will be conducted
6 by the pretrial officer at a reasonable time, in a
7 reasonable manner, based on reasonable suspicion of
8 contraband or evidence of a violation or condition of
9 release. Failure to submit to that may result in
10 revocation of these conditions.

11 And, of course, you are to abide by all
12 state court hearings which now may be pending and the
13 conditions imposed by those state courts. Failure to
14 not appear in a state court proceeding to me amounts
15 to a violation of the conditions that I am now
16 imposing which would be problematic and something I
17 am certain you don't want to deal with.

18 Those -- that is my order in terms of
19 Mr. Rojas's release. Are there any questions about
20 the extent of my order? I understand that there may
21 be disagreement with it, but does anyone have any
22 questions as to what was ordered?

23 MR. YEATES: Not the United States.

24 THE COURT: Mr. Berardi, any questions? If
25 you're talking you're probably on mute.

1 MR. BERARDI: No, Your Honor. No questions
2 on that. I did have one question as far as the
3 deadlines for the case. Does the Court know what
4 that deadline was for motions?

5 THE COURT: Mr. Yeates, do you happen to
6 have that? I do not have those deadlines in front of
7 me.

8 MR. YEATES: Your Honor, I can probably find
9 it quickly but it would probably be easier for
10 Mr. Berardi to simply go to the hearing with
11 Mr. Patton that has all of the --

12 MR. BERARDI: That's fine, Your Honor. I
13 just thought if the Court knew it I was just asking.
14 No problem.

15 THE COURT: What we'll do there is when we
16 issue our minute entry order for this hearing, we can
17 find those deadlines and put them in there. Just we
18 all have agreed we're going to abide by them, so
19 we'll put them in there so you can put them on your
20 calendar.

21 In addition to those conditions, I do have
22 by law to warn you not to violate Section 1503, 1510,
23 1512, or 1513 of the United States Code which as I
24 mentioned before deals with being charged with
25 intimidation for retaliation against witnesses,

1 jurors, or court officers, or obstruction of a
2 criminal investigation. And under 18 USC 3147, there
3 is an enhanced penalty of up to ten years in prison
4 for crimes that are committed while on pretrial
5 release.

6 So with those warnings, which will be coming
7 out in our conditions of release as well, I order
8 that the Defendant is to be released pending those
9 conditions and this Court will be in recess.

10 MR. YEATES: Your Honor, may I bring up one
11 issue?

12 THE COURT: Certainly.

13 MR. YEATES: Your Honor, the issue as to
14 discovery. First, I would ask whether Mr. Berardi is
15 going to move for discovery pursuant to Rule 16.

16 MR. BERARDI: Your Honor, I have those -- I
17 have that and my appearance ready to be filed. There
18 was a problem with my password last night and I spoke
19 with the clerk today. They said they would have that
20 resolved by tomorrow so I will formally file those
21 tomorrow.

22 THE COURT: Thank you, Mr. Berardi. Thank
23 you, Mr. Yeates. How long would you need to produce
24 discovery or has it already been produced to the
25 other co-defendants?

1 MR. YEATES: It has not been produced.
2 We're scheduled to produce the first notice of
3 compliance on the 10th of this month, so six days
4 from now. I want to inform the Court that we have
5 many, many terabytes of video. And we understand the
6 first production will be approximately three
7 terabytes of information and there will be additional
8 terabytes to follow.

9 But we would ask, one, that Mr. Berardi make
10 a formal oral motion for discovery here. And two,
11 that he supply at least a three terabyte hard drive
12 to the U.S. Attorney's Office so that we can upload
13 the first notice of compliance production.

14 THE COURT: Mr. Berardi, do you make a
15 motion for discovery?

16 MR. BERARDI: I do, Your Honor. I move for
17 discovery and I will provide a three terabyte drive.
18 Do you want me to just drop that off at your office?

19 MR. YEATES: That would be ideal,
20 Mr. Berardi. Thank you.

21 MR. BERARDI: Okay.

22 THE COURT: Thank you both for your
23 cooperation in that regard. Is there anything else
24 we need to discuss at today's hearing?

25 MR. KING: Your Honor, if I may?

1 THE COURT: Yes, Mr. King.

2 MR. KING: I -- I apologize if I didn't hear
3 it, but I am not sure that you ordered the no
4 weapons, no firearms condition.

5 THE COURT: If I omitted that that was
6 unintentional. But yes, there is to be no possession
7 of firearms, ammunition, or destructive device or
8 dangerous weapon.

9 MR. KING: Okay. And one other thing, you
10 did talk about his employment. I should mention that
11 he does do sound engineering at some bars which would
12 fall under the condition of not going anywhere where
13 alcohol is the main -- the chief item.

14 THE DEFENDANT: That is my only income, just
15 so you know.

16 MR. KING: The chief item of order. Um, is
17 it the Court's intention to not allow him to go to
18 those places or to allow him to go to those places
19 under the being employed only for employment.

20 THE COURT: So two questions there, I
21 appreciate the clarification. The first is the
22 following. The current what I understand the sound
23 engineer job is few and far between especially right
24 now with COVID. That's a problem for the Court and
25 so I think Mr. Rojas needs to go out and find a

1 different job that is going to keep him employed
2 gainfully every single day.

3 MR. KING: Sure.

4 THE COURT: Part two is if he decides to do
5 that on a part-time basis kind of a gig by gig basis
6 so to speak, then the Court would allow him to be in
7 those places for purposes of employment. However, if
8 he decides to imbibe in the products, in the
9 alcoholic products that are there, that would be
10 deemed a violation of his conditions.

11 So number one, so just to be clear, he needs
12 to find a job that is going too be occupying his time
13 daily. If he decides to do this on a case-by-case
14 basis he may. And if it requires him to go into an
15 establishment where alcohol is the main -- at least
16 the main service item, then he is -- he can go in
17 there for employment purposes only but he is not to
18 engage in partaking of that substance or that will be
19 a violation of his conditions.

20 MR. KING: Thank you for the clarification,
21 Your Honor.

22 THE COURT: Thank you for raising that. We
23 need to make sure it is clear for everyone's
24 understanding. We don't want misunderstandings. The
25 stakes are too high.

1 THE DEFENDANT: I understand.

2 THE COURT: Any questions?

3 THE DEFENDANT: No, Your Honor.

4 MR. BERARDI: Could I just talk to Mr. Rojas
5 just briefly? I don't care if -- I don't need a
6 separate room or nothing. Just --

7 THE COURT: Well, let's just put you in a
8 separate room. We can dismiss everyone. I will -- I
9 can just do that right now and then when you're done
10 the Zoom call will be over. So I'll just put you two
11 in a breakout room and we will adjourn this hearing.

12 THE DEFENDANT: Thank you, Your Honor.

13 MR. BERARDI: Thank you.

14 (Whereupon, the hearing concluded.)
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REPORTER'S CERTIFICATION

I hereby certify that the foregoing transcript was taken from a tape recording stenographically to the best of my ability to hear and understand said tape recording, that my said stenographic notes were thereafter transcribed into typewriting at my direction.

Dated this 10th day of August, 2020.

Laura W. Robinson